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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

APR 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding) PP Docket No. 93-253

TO: The Secretary

EX PARTE MEMORANDUM OF
MASTEC, INC.

MasTec, Inc. submits an original plus one copy of this Ex Parte Memorandum for inclusion in the record of the above-referenced proceeding.

The new personal communication services will create a multibillion-dollar telecommunications market. For instance, it has been estimated that the auction price for one of the Miami PCS licenses will be approximately \$50 million and it will cost approximately \$75 million to construct.

In order for minorities to play a meaningful role in PCS, and to raise the requisite capital to compete in the PCS marketplace, the Commission must implement a multi-level flexible approach including such elements as: frequency set-asides, installment payments, tax certificates, flexible consortia configurations and flexible application of attribution rules. Anything short of these devices for minority controlled businesses would fail to meet the statutory requirement of Section 309(j)(4)(D) of the Communications Act and would most assuredly leave minorities on the outside of PCS.

The Commission has previously proposed to set aside two blocks of spectrum nationwide, one 20 MHz block and a 10 MHz block. These blocks would only be subject to the bidding of small businesses, rural telcos, minority and women businesses (the "designated entities"). There have been discussions that any set-aside is unnecessary and that setting aside the 20 MHz block would be wasteful because the designated entities probably will not be capable of building a PCS system fast enough,

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if at all. Failure to include a specific 20 MHz block as a set-aside would fulfill this prophecy. While bidding credits would appear to be a reasonable substitute for the set-aside, given the anticipated frenzy for the larger blocks of frequency and the resulting high auction prices, it is likely that any bidding credit would be insignificant. For minority businesses, the inclusion of at least 20 MHz of spectrum will ensure that a variety of services and new technology develop under their ownership and control. Additionally, at least 20 MHz of spectrum will be required to attract investors and provide needed capital.

In a general rulemaking on the spectrum auction process, the Commission released a March 8, 1994 Notice stating that small businesses will be afforded the opportunity to utilize installment payments in paying for their licenses. The Commission Notice did not state that minority controlled businesses would be granted this preference as well. In addition, on April 20, 1994 the FCC adopted competition bidding rules for awarding narrowband PCS licenses (PP Docket No. 93-253) which also follows this approach. As discussed above, anticipated auction prices for PCS will be extremely high. The institution of installment payments is critical for minority applicants, as well as small businesses. The requirement that minority applications be owned and controlled with at least a 50% minority held interest will be an adequate barrier for fraudulent applications. In addition, the argument that some companies which are controlled by women, such as The Washington Post, don't need installment payments only serves to confuse the real issue. Minority companies critically need this financial device to participate in PCS in the large markets.

Tax certificates have historically been used by the Commission to encourage minority ownership and control of licenses. This financing mechanism is of fundamental importance to investors and can facilitate minority entry into PCS. The possibility that tax certificates may lead to early transfers of licenses or transfers in control can be eliminated by Commission safeguards against unjust enrichment. Perhaps more than any other device, tax incentives will provide minority controlled businesses access to the financial resources they will need at the outset to enter the capital intensive PCS business.

Numerous trade press have already reported the creation of non-minority consortia to participate in PCS. The need for the consortia is clearly driven by the anticipated high auction prices and the high costs of construction. Creating incentives for these consortia to include minority participation is a direct response to the

developing PCS marketplace in order to insure the Congressional mandate.

Finally, the Commission should consider flexible application of its attribution rules to foster minority participation. For instance, in broadcasting pursuant to Section 73.3555 although a broadcaster is normally limited to ownerships of 12 television stations, if the broadcaster holds a minority interest in a station owned and controlled by a minority, he can increase his holding to 14 television stations. In PCS, companies are limited to 40 MHz of spectrum and cellular companies are limited to 10 MHz, with a five (5) percent attribution test pursuant to Section 99.202(c). The Commission should consider raising the five (5) percent limit to twenty (20) percent if the interest is in a minority controlled PCS license.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Leibowitz', is written over a horizontal line.

Matthew L. Leibowitz
Counsel for MasTec, Inc.

Leibowitz & Associates, P.A.
One S.E. Third Avenue
Suite 1450
Miami, FL 33131
(305) 530-1322

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